

REMARKS/ARGUMENTS

Claims 1-13 are pending in the present application.

This Amendment is in response to the Advisory Action mailed September 29, 2008. In the Advisory Action, the Examiner rejected claims 1-3, 5-9, and 11-13 under 35 U.S.C. §103(a). Applicant has amended claims 1 and 7, and canceled claims 3 and 9. Reconsideration in light of the amendments and remarks made herein is respectfully requested.

Rejection Under 35 U.S.C. § 103

In the Final Office Action, the Examiner rejected claims 1-3, 5-9, and 11-13 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,157,719 issued to Wasilewski et al. ("Wasilewski") in view of U.S. Patent No. 6,981,272 issued to Morinaga et al. ("Morinaga") in view of U.S. Patent No. 7,248,776 issued to Boston et al. ("Boston"). Applicant respectfully traverses the rejection and submits that the Examiner has not met the burden of establishing a *prima facie* case of obviousness.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. *MPEP* §2143, p. 2100-126 to 2100-130 (8th Ed., Rev. 5, August 2006). Applicant respectfully submits that there is no suggestion or motivation to combine their teachings, and thus no *prima facie* case of obviousness has been established.

Furthermore, the Supreme Court in *Graham v. John Deere*, 383 U.S. 1, 148 USPQ 459 (1966), stated: "Under § 103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved. Against this background, the obviousness or nonobviousness of the subject matter is determined." MPEP 2141. In *KSR International Co. vs. Teleflex, Inc.*, 127 S.Ct. 1727 (2007) (Kennedy, J.), the Court explained that "[o]ften, it will be necessary for a court to look to interrelated teachings of multiple patents; the effects of demands known to the design community or present in the marketplace; and the background knowledge

possessed by a person having ordinary skill in the art, all in order to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue.” The Court further required that an explicit analysis for this reason must be made. “[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *KSR 127 S.Ct.* at 1741, quoting *In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006). In the instant case, Applicant respectfully submits that there are significant differences between the cited references and the claimed invention and there is no apparent reason to combine the known elements in the manner as claimed, and thus no *prima facie* case of obviousness has been established.

In the Final Office Action, the Examiner admitted that Wasilewski does not disclose “wherein the use control metadata include the CCI, the BF and the RI, determines from the CCI whether a broadcasting content can be copied freely, copied one time only and never copied, identifies from the BF whether the content is a broadcasting content, and indicates in the RI a length of time that the broadcasting content can remain stored in a hard disk of a receiver,” as recited in claims 1, 7, and 13 (Final Office Action, pages 4, 8, and 11).

However, in the Advisory Action, the Examiner now contends that “Wasilewski does disclose the metadata, his flags represent the use control metadata (data about data or information), the information on whether the right to copy the event has been purchased (CCI), whether the event is active or analog or digital (BF) and whether its end time has been extended (RI)”, citing Wasilewski, figure 17, col. 31, lines 12-30” (Advisory Action, page 2, par. 2). Applicant respectfully disagrees.

Wasilewski merely discloses “NVSC 1701 storing entitlement information for events” (Wasilewski, col. 31, lines 12-13; Figure 17). “Flag Fields 1705 include flags that indicate ... (3) whether the entitlement agent has confirmed purchase of the event, ... (7) whether the right to copy the event has been purchased, and (8) whether the event is an analog or digital service” (Wasilewski, col. 31, lines 17-25; Figure 17).

Claims 1, 7, and 13 recite “determines from the CCI whether a broadcasting content can be copied freely, copied one time only and never copied”. While the flag (7) indicate “whether the right to copy the event has been purchased”, there is no teaching or suggestion of

determining from the flag (7) *whether a broadcasting content can be copied freely, copied one time only and never copied*, as recited in the claims. Accordingly, the flag (7) cannot be equivalent to the CCI, as delineated in the claims.

Additionally, the Examiner alleges that the flag (8), which indicates whether the event is an analog or digital service, is equivalent to the BF. Applicant respectfully disagrees and submits that claims 1, 7, and 13 recite “identifies from the BF *whether the content is a broadcasting content*.” Indicating the format of the event being either analog or digital does not provide any identification as to whether the event is a broadcasting content.

Further, claims 1, 7, and 13 recite “indicates in the RI *a length of time* that the broadcasting content can remain stored in a hard disk of a receiver.” The Examiner alleges that flag (3) which indicates “whether the entitlement agent has confirmed purchase of the event” is equivalent to the RI. Applicant respectfully disagrees. Flag (3) is merely indicates whether or not there has been a confirmation of purchase of an event while indicated in the RI is *a length of time* that the content can remain stored in a hard disk of a receiver. Since a confirmation of purchase provides no teaching or suggestion of a *length of time*, the flag (3) cannot be equivalent to the RI.

Accordingly, Wasilewski fails to disclose “the use control metadata include the CCI, the BF and the RI, determines from the CCI whether a broadcasting content can be copied freely, copied one time only and never copied, identifies from the BF whether the content is a broadcasting content, and indicates in the RI a length of time that the broadcasting content can remain stored in a hard disk of a receiver,” as admitted by the Examiner in the Final Office Action.

A review of Morinaga and Boston reveals that these prior arts fail to cure the deficiencies of Wasilewski.

In the Advisory Action, the Examiner further argues “Morinaga... shows meta data information related to use control” (Advisory Action, page 2, par. 2) and maintains that Morinaga discloses “control data whether a broadcasting content can be copied freely, copied one time only and never copied” (Final Office Action, pages 4, 8, and 12; and Advisory Action, page 2, par. 3). Applicant respectfully disagrees and submits that the Examiner fails to address our argument regarding Morinaga and thus, improperly maintains the rejection.

As argued previously, Morinaga merely discloses a descriptor called digital_copy_control_descriptor which includes CGMS (copy generation management system) information being added to the contents of a program being broadcasted (Morinaga, col. 3, lines 5-25). In contrast, claims 1, 7, and 13 recite “the use control metadata determining from the CCI whether a broadcasting content can be copied freely, copied one time only and never copied.” Since the CGMS is merely added to the program contents, the CGMS cannot be equivalent to the CCI (copy control information), as alleged by the Examiner, which is included in the use control metadata.

Additionally, the Examiner contends that Boston discloses “retention information (RI) including a length of time that the broadcasting content can remain stored in a hard disk of a receiver” (Final Office Action, page 5, 9, and 13; Advisory Action, page 2, par. 2). In the Advisory Action, the Examiner further argues “Boston’s retention period is use control (it is certainly use control data, given that it pertains to the use of said content, whether viewed or stored) and it is meta data (it is data about data or... it includes information on things such as kind and location) and it does show the length of time content can remain stored,” citing Boston, col. 14, line 64 to col. 15, line 15 (Advisory Action, page 2, par. 3).

Applicant respectfully disagrees and submits that the Examiner improperly ignores the language in the claims in maintaining the rejection and misconstrues Applicant’s arguments.

Boston merely discloses a retention period 276 which is a field indicating to the personal video recorder (PVR) how long to retain a show in the storage space before deleting the show (Boston, col. 14, lines 64-66). The retention period 276 works with the Boolean indications of viewing 248 to indicate to the PVR when to delete the show. If the PVR profile is set such that shows are to be deleted only after they are viewed, the PVR will not delete a show from storage space until the show is viewed, even if the view time is later than the end of the retention period 276 (Boston, col. 14, line 64 to col. 15, line 9). Thus, the show can remain stored beyond the retention period 276. In contrast, claims 1, 7, and 13 recite “the use control metadata... indicates in the RI a length of time that the broadcasting content can remain stored in a hard disk of a receiver.” Since the retention period 276 does not indicate the length of time the show can remain stored, the retention period 276 cannot be equivalent to the RI, as delineated in the claims.

In the Advisory Action, the Examiner further states that “the Examiner fails to understand the contrast scenario set up by applicant in remarks dated 6/30/08. It is obvious to see that the retention period data of Boston is the retention information (RI) data in the instant application, so there is no contrast between the inventions here. The applicant’s notice about a hypothetical scenario based on a particular profile setting is a tangential and unproductive argument. The PVR profile is independent of the Boston retention period meta data (RI) (see Boston, Fig. 3). As noted in Boston, col. 14, lines 64-67, they can work together, so obviously they are separate functional units” (Advisory Action, page 2, par. 3).

Applicant respectfully disagrees and directs the Examiner’s attention to his cited section of Boston:

“The retention period 276 is a field indicating how long to retain the show before deleting it. The retention period 276 and indications of viewing 248 can work together in various PVR according to embodiments of the present invention. In FIG. 3, for example, the PVR Profile 300 includes a Boolean indication whether to delete shows only after they are viewed, DeleteOnView 304. In a PVR according to FIG. 3, if DeleteOnView 304 is set to True, then the PVR will not delete a show from storage space until the show is viewed even if the view time is later than the end of the retention period 276” (Boston, col. 14, line 64 to col. 15, line 7; Figure 3).

As delineated in the cited portion of Boston, Applicant submits that the arguments set forth above do not delineate a mere “hypothetical scenario”, as alleged by the Examiner, but rather is clearly supported by both Figure 3 and the corresponding text in Boston. Moreover, Applicant respectfully submits that the Examiner’s statement “It is obvious to see that the retention period data of Boston is the retention information (RI) data in the instant application, so there is no contrast between the inventions here” is improper and conclusory.

Nevertheless, as discussed above, Wasilewski fails to disclose “wherein the use control metadata include the CCI, the BF and the RI”, as recited in the claims and Boston fails to cure the deficiencies of Wasilewski. More specifically, Boston does not disclose the use control metadata includes the RI. The Examiner argues that “Boston’s retention period is use control

...and it is meta data” (Advisory Action, page 2, par. 3). Applicant respectfully submits that the claims delineate that the use control metadata includes the RI such that the use control metadata and the RI cannot both be disclosed by the retention period from Boston.

Additionally, Applicant has amended independent claims 1 and 7 to include the elements of claims 3 and 9. Applicant respectfully submits that the cited prior art fails to teach “wherein the content ID is abstracted and used for determining whether a content is an unlawful broadcasting content when the broadcasting content is distributed unlawfully, or the content ID is abstracted and used for determining whether a content that are broadcasted currently is authentic or not after monitoring”, as recited in amended claims 1 and 7.

In the Final Office Action, the Examiner alleges that the content ID which “is abstracted and used for determining whether a content is an unlawful broadcasting content when the broadcasting content is distributed unlawfully”, or the content ID which “is abstracted and used for determining whether a content that are broadcasted currently is authentic or not after monitoring”, as recited in amended claims 1 and 7, is allegedly equivalent to the event descriptors 1703 which contain the flag fields 1705 discussed above (Final Office Action, page 5 and 9). Since none of the flags pertain to unlawful broadcasting or broadcasting that is authentic, Wasilewski does not disclose the elements recited in claims 3 and 7, as alleged by the Examiner.

Furthermore, based on the dependency of claims 2, 5, 6, 8, 11, and 12 on independent claims 1 and 7 believed to be in condition for allowance, no further discussion as to the grounds for traverse is warranted.

Therefore, Applicant believes that independent claims 1, 7, and 13 and their respective dependent claims are distinguishable over the cited prior art references. Accordingly, Applicant respectfully requests the rejection under 35 U.S.C. §103(a) be withdrawn.

Conclusion

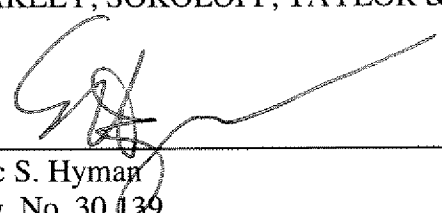
Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP

Dated: October 31, 2008

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